

Employee Constitutional Claims

- I. Bill of Rights / 42 USC §1983
 - A. First Amendment
 - B. Fourth Amendment
 - C. Fifth Amendment
 - D. Eighth Amendment
- II. Right to Privacy and Fourth Amendment
 - A. Search of employee desk, locker, etc
 - B. Search of employee e-mails, voicemails, employer issued cell phones, etc
- III. Fourth Amendment and Drug Testing
 - A. Reasonable suspicion
 - B. Safety Sensitive Positions
 - C. Job Applicants
- IV. 14th Amendment – Due Process
 - A. Notice
 - B. Opportunity to be heard
- V. 14th Amendment – Equal Protection Clause (see also §1981)
 - A. Discrimination by state actor
 - 1. treated differently than those similarly situated
 - 2. intentional on the basis of race (Title VII standard)

- B. Because of membership in a protected class
- C. Deprived of Equal Protection of the Laws
- VI. 14th Amendment – Liberty Interest Claim
 - D. Termination that Destroys Employee’s Reputation
 - E. Elements for the Liberty Interest Claim
- VII. First Amendment
 - A. Access to Courts
 - B. Freedom of Speech
 - 1. Protected Free Speech / Protected Freedom of Association
 - a. Matter of Public Concern
 - b. Citizen not government employee
 - 2. Government efficiency
 - 3. Speech / Association motivated adverse employment action
 - 4. Defense – would have done adverse action even if there had been no free speech / association

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